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October 17, 2016

Honorable Board of Supervisors
Eric Rood Administrative Center
950 Maidu Avenue
Nevada City, CA 95959

DATE OF MEETING: November 15, 2016

SUBJECT: Introduce and Waive Further Reading of An Ordinance Amending Appendix I of Section A-II 22.3 of Article 22 of Chapter II of the Nevada County Administrative Code Regarding the County's Conflict of Interest Code

RECOMMENDATION: Introduce and waive further reading of the attached Ordinance Amending Appendix I to Article 22 of Chapter II of the Nevada County Administrative Code regarding the County's Conflict of Interest Code

FUNDING: Not applicable.

BACKGROUND: Under the California Political Reform Act (the "Act"), all public agencies are required to adopt a conflict-of-interest code. This Code lists County positions that make or participate in making governmental decisions and are therefore required to file annual Statements of Economic Interests (Form 700s). The Code also determines which financial interests must be disclosed. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests (including investments, interests in real property, sources of income and business positions) that may create conflicts of interests or otherwise affect a public official's decision-making. The Act applies to both paid and volunteer positions.

Typically, any position that involves voting on matters, making recommendations directly to the Board, negotiating contracts, or making recommendations on purchases without substantive review must be included in the County's conflict of interest code. Government Code Section 87200 lists positions that do not have to be listed in our Code because they are automatically required to file a Form 700. The Board members, County Executive Officer, County Counsel, District Attorney, Treasurer-Tax Collector and all Planning Commissioners are required to file a Form 700 under Government Code Section 87200 and are simply listed in the County's Conflict of Interest Code for convenience. The County's Conflict of Interest Code covers everyone else, including all of our Board-appointed commissioners, mid- to level management employees and independent contractors.

State law requires the County to review, update and make corrections to this Code every two years, in even numbered years. This review is required to determine whether certain job

classifications should be added or deleted from the list of covered positions, and whether the categories of disclosure for each position should be defined or assigned differently. Any changes must be approved and become effective by December 31, 2016.

Staff has completed its biennial review of the County's Conflict of Interest Code and recommends that the list of Designated Employees be updated to reflect the County's current organizational structure. The proposed ordinance adds, deletes and modifies position titles consistent with the County's personnel staffing resolutions, and makes minor corrections to the current Code. The recommended changes are set forth in Appendix I to the attached ordinance. There have been no concerns regarding the proposed changes, except as outlined below.

Historical Landmarks Commission

During the 2014 review, staff from the Clerk of the Board's office attended an FPPC training where the Historical Landmarks Commission was used as an example of a governmental body that is required to have a conflict of interest code. The Clerk then checked our Code and determined that, for unknown reasons, this Commission was not listed in the County's Conflict of Interest Code. She also confirmed that all other Board-appointed Commissions are listed in the Code and do file Form 700s as required.

Staff notified the Commission in late August of 2014 and again on August 29, 2016 of its recommendation that this Commission be added to the County's conflict of interest code because it makes governmental decisions and recommendations directly to the Board regarding the designation of historical landmark sites. These governmental designations can have significant financial impacts to the property in question as well as the surrounding neighborhoods and businesses that specialize in renovating historical properties. The Commission was assigned Disclosure Category 1, which is the same category to which all other land-use related County Commissions are assigned.

The Commission expressed concern about being required to comply with this annual disclosure requirement in 2014 and again in 2016. A copy of the Commission's most recent correspondence to the County Counsel's office is attached to this staff report. The Commission's initial objections to being added to the County's Conflict of Interest Code appear to be (a) they are volunteers; and (b) the Historical Landmark Commission is not specifically listed in Government Code section 87200.

As noted above, volunteers are not exempt from the FPPC's requirements. The focus of the inquiry is on the nature of the position and its role and influence in making government decisions. As also noted above, the Historical Landmarks Commission correctly states that section 87200 does not apply to it. The issue is whether or not the Commission should be included in the County's Conflict of Interest Code pursuant to Government Code section 87300 and applicable FPPC regulations.

At the conclusion of the Board's consideration of the 2014 ordinance, it was decided to postpone the addition of the Historical Landmarks to the Conflict of Interest Code to research the

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application of an exemption raised by the Commission. We conducted that research, and our concern and the Commission's position remain unchanged. To that end, we have submitted a request to the FPPC for an Advisory Opinion to clarify the issue. We await that response. For your reference, we have attached our recent correspondence with the Historical Landmark Commission and our request to the FPPC.

Since this issue has not been resolved, we recommend postponing any decision regarding whether to include the Historic Landmark Commission in the Conflict of Interest Code Appendix until we receive that opinion from the FPPC. We will bring a further recommendation when we receive that opinion.

Respectfully submitted,

Alison A. Barratt-Green
County Counsel

ABG/ch

Attachments:

1. Proposed Ordinance Amending and Updating Appendix I
2. Appendix I to the County's Conflict of Interest Code with redlined changes
3. Letter to the Historical Landmarks Commission from County Counsel dated August 29, 2016
4. Letter from the Historical Landmarks Commission to the Board of Supervisors, dated September 20, 2016
5. Letter to the Fair Political Practices Commission from County Counsel dated September 28, 2016.